

ASSEMBLY BILL

No. 2935

**Introduced by Committee on Information Technology
(Dutra (Chair), Alquist, and Ducheny)**

March 23, 2000

An act to amend Section 2952 of the Civil Code, to amend Sections 26205, 26205.1, 27001, 27002.1, and 27201 of, and to add Chapter 13 (commencing with Section 30700) to Division 3 of Title 3 of, the Government Code, relating to government records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2935, as introduced, Committee on Information Technology. Government records.

(1) Existing law provides that whenever a mortgage or deed of trust presented for recordation contains a reference to provisions in a fictitious mortgage or deed preceded by a statement to the effect that it is not to be recorded, the county recorder shall record only the mortgage or deed of trust portion of the document and shall not be liable for failure to record the portion with instructions not to record.

This bill would delete that provision.

(2) Existing law authorizes county officers to comply with requirements to record and preserve documents and records by various methods before destroying original documents.

This bill would define information technology and related terms and would authorize the recording and preservation of documents by those county officers by the application of other information technology.

(3) Existing law requires documents required to be recorded by the county recorder to contain an original signature or signatures.

This bill would authorize facsimile signatures to be accepted on liens recorded by a government agency as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2952 of the Civil Code is
2 amended to read:

3 2952. Mortgages and deeds of trust of real property
4 may be acknowledged or proved, certified and recorded,
5 in like manner and with like effect, as grants thereof;
6 provided, however, that a mortgage or deed of trust of
7 real property may be recorded and constructive notice of
8 the same and the contents thereof given in the following
9 manner:

10 Any person may record in the office of the county
11 recorder of any county fictitious mortgages and deeds of
12 trust of real property. ~~Such~~ *Those* fictitious mortgages
13 and deeds of trust need not be acknowledged, or proved
14 or certified to be recorded or entitled to record. ~~Such~~
15 *Those* mortgages and deeds of trust shall have noted upon
16 the face thereof that they are fictitious. The county
17 recorder shall index and record ~~such~~ fictitious mortgages
18 and deeds of trust in the same manner as other mortgages
19 and deeds of trust are recorded, and shall note on all
20 indices and records of the same that they are fictitious.
21 Thereafter, any of the provisions of any ~~such~~ recorded
22 fictitious mortgage or deed of trust may be included for
23 any and all purposes in any mortgage or deed of trust by
24 reference therein to any ~~such~~ *of those* provisions, without
25 setting the same forth in full; provided, ~~such~~ *the* fictitious
26 mortgage or deed of trust is of record in the county in
27 which the mortgage or deed of trust adopting or
28 including by reference any of the provisions thereof is
29 recorded. ~~Such~~ *The* reference shall contain a statement,



1 as to each county in which the mortgage or deed of trust
 2 containing such a reference is recorded, of the date ~~such~~
 3 ~~the~~ fictitious mortgage or deed of trust was recorded, the
 4 county recorder's office wherein it is recorded, and the
 5 book or volume and the first page of the records in the
 6 recorder's office wherein and at which ~~any—such~~ *the*
 7 fictitious mortgage or deed of trust was recorded, and a
 8 statement by paragraph numbers or any other method
 9 that will definitely identify the same, of the specific
 10 provisions of ~~any—such~~ *the* fictitious mortgage or deed of
 11 trust that are being so adopted and included therein. The
 12 recording of any ~~such~~ mortgage or deed of trust which has
 13 included therein any ~~such~~ *of those* provisions by
 14 reference as aforesaid shall operate as constructive notice
 15 of the whole thereof including the terms, as a part of the
 16 written contents of ~~any—such~~ *the* mortgage or deed of
 17 trust, of ~~any—such~~ *those* provisions so included by
 18 reference as though the same were written in full therein.
 19 The parties bound or to be bound by provisions so
 20 adopted and included by reference shall be bound
 21 thereby in the same manner and with like effect for all
 22 purposes as though ~~such~~ *those* provisions had been and
 23 were set forth in full in any ~~such~~ mortgage or deed of
 24 trust.

25 ~~Whenever a mortgage or deed of trust is presented for~~
 26 ~~recordation and such mortgage or deed of trust contains~~
 27 ~~a reference to provisions in a fictitious mortgage or deed~~
 28 ~~of trust with a part or all of the provisions typed, written,~~
 29 ~~or printed on the mortgage or deed of trust preceded by~~
 30 ~~“do not record” or “not to be recorded,” or the like, the~~
 31 ~~county recorder shall record only the mortgage or deed~~
 32 ~~of trust portion of the document and shall not be liable for~~
 33 ~~failing to make a record of the portion of the document~~
 34 ~~bearing provisions preceded by the instructions not to~~
 35 ~~record.~~

36 The amendment to this section enacted by the 1957
 37 Regular Session of the Legislature does not constitute a
 38 change in, but is declaratory of, the preexisting law.

39 SEC. 2. Section 26205 of the Government Code is
 40 amended to read:

1 26205. At the request of the county officer concerned,
2 the board of supervisors of any county may authorize the
3 destruction of any record, paper, or document that is not
4 expressly required by law to be filed and preserved if all
5 of the following conditions are complied with:

6 (a) The record, paper, or document is photographed,
7 microphotographed, reproduced by electronically
8 recorded video images on magnetic surfaces, recorded in
9 the electronic data-processing system, recorded on
10 optical disk, or reproduced on film or any other medium
11 that is a trusted system and that does not permit additions,
12 deletions, or changes to the original document and is
13 produced in compliance with the regulations adopted by
14 the Secretary of State, as specified in Section 12168.7 for
15 recording of permanent records or nonpermanent
16 records.

17 (b) The device used to reproduce the record, paper,
18 or document on film, optical disk, or any other medium
19 is one that accurately reproduces the original thereof in
20 all details and which does not permit additions, deletions,
21 or changes to the original document images.

22 (c) The photographs, microphotographs,
23 electronically recorded video images on magnetic
24 surfaces, records in the electronic data-processing
25 system, records recorded on optical disk, or other
26 reproductions on film or any other medium, *including*
27 *information technology pursuant to Section 30701*, are
28 placed in conveniently accessible files and provision is
29 made for preserving, examining, and using the files.

30 Notwithstanding any other provision of this section,
31 destruction of the original records, papers, or documents
32 is not authorized when the method of reproduction
33 pursuant to this section is reproduction of electronically
34 recorded video images on magnetic surfaces unless a
35 duplicate videotape of the images is separately
36 maintained. A duplicate copy of a record contained in the
37 electronic data-processing system, on optical disk, or on
38 any other medium that does not permit additions,
39 deletions, or changes to the original document images
40 shall also be separately maintained.

1 SEC. 3. Section 26205.1 of the Government Code is
2 amended to read:

3 26205.1. (a) The county officer having custody of
4 nonjudicial public records, documents, instruments,
5 books, and papers may cause to be destroyed any or all of
6 the records, documents, instruments, books, and papers
7 if all of the following conditions exist:

8 (1) The board of supervisors of the county has adopted
9 a resolution authorizing the county officer to destroy
10 records, documents, instruments, books, and papers
11 pursuant to this subdivision. The resolution may impose
12 conditions, in addition to those specified in this
13 subdivision, that the board of supervisors determines are
14 appropriate.

15 (2) The county officer who destroys any record,
16 document, instrument, book, or paper pursuant to the
17 authority granted by this subdivision and a resolution of
18 the board of supervisors adopted pursuant to paragraph
19 (1) shall maintain for the use of the public a photographic
20 or microphotographic film, electronically recorded video
21 production, a record contained in the electronic
22 data-processing system, a record recorded on optical disk,
23 a record recorded by any other medium that does not
24 permit additions, deletions, or changes to the original
25 document, or other duplicate of the record, document,
26 instrument, book, or paper destroyed.

27 (3) The record, paper or document is photographed,
28 microphotographed, reproduced by electronically
29 recorded video images on magnetic surfaces, recorded in
30 the electronic data-processing system, recorded on
31 optical disk or reproduced on film or any other medium,
32 *or information technology pursuant to Section 30701*, that
33 is a trusted system and that does not permit additions,
34 deletions, or changes to the original document and is
35 produced in compliance with the regulations adopted by
36 the Secretary of State, as specified in Section 12168.7 for
37 recording of permanent records or nonpermanent
38 records.

39 (b) Paragraphs (2) and (3) of subdivision (a) do not
40 apply to records prepared or received other than

1 pursuant to a state statute or county charter, or records
2 that are not expressly required by law to be filed and
3 preserved.

4 For the purposes of this section, every reproduction
5 shall be deemed to be an original record and a transcript,
6 exemplification, or certified copy of any reproduction
7 shall be deemed to be a transcript, exemplification, or
8 certified copy, as the case may be, of the original.

9 (c) The county clerk having custody of the original or
10 a copy of the articles of any corporation may cause the
11 destruction of any or all the documents. "Articles"
12 includes the articles of incorporation, amendments
13 thereto, amended articles, restated articles, certificate of
14 incorporation, certificates of determination of
15 preferences, dissolution certificates, merger certificates,
16 and agreements of consolidation or merger.

17 (d) Notwithstanding any other provision of this
18 section, destruction of the original records, papers, or
19 documents is not authorized when the method of
20 reproduction pursuant to this section is reproduction of
21 electronically recorded video images on magnetic
22 surfaces unless a duplicate videotape of the images is
23 separately maintained. A duplicate copy of a record
24 contained in the electronic data-processing system, on
25 optical disk, or on any other medium that does not permit
26 additions, deletions, or changes to the original document
27 shall also be separately maintained.

28 SEC. 4. Section 27001 of the Government Code is
29 amended to read:

30 27001. The treasurer shall file and keep the
31 certificates of the auditor delivered to him or her when
32 money is paid into the treasury. Notwithstanding Sections
33 26201, 26202, and 26205, the treasurer may destroy any
34 certificate pursuant to this section under either of the
35 following circumstances:

36 (a) The certificate has been filed for more than five
37 years.

38 (b) The certificate has been filed for more than one
39 year, and all of the following conditions are complied
40 with:

(1) The record, paper, or document is photographed, microphotographed, or reproduced on film of a type approved for permanent photographic records by the National Bureau of Standards.

(2) The device used to reproduce the record, paper, or document on film is one that accurately reproduces the original thereof in all details.

(3) The photographs, microphotographs, or other reproductions on film are placed in conveniently accessible files and provision is made for preserving, examining, and using the same.

(4) Other information technology that is used in accordance with Section 30701.

SEC. 5. Section 27002.1 of the Government Code is amended to read:

27002.1. (a) The treasurer may, in lieu of entering in books an account of the receipt and expenditure of all money received or paid out by him or her as provided in Section 27002, photograph, microphotograph, photocopy, or enter into an electronic data processing system that utilizes optical transmission and filing, all receipts for money received by him or her and all warrants paid out by him or her.

(b) Every reproduction described in subdivision (a) shall be deemed and considered an original, and a transcript, exemplification, or certified copy of any of those reproductions shall be deemed and considered a transcript, exemplification, or certified copy, as the case may be, of the original.

(c) All reproductions described in subdivision (a) shall be properly indexed and placed in convenient, accessible files. Each roll of microfilm shall be deemed and constitute a book, and shall be designated and numbered, and provision shall be made for preserving, examining, and using it.

A duplicate of each roll of microfilm shall be made and kept in a safe and separate place.

(d) The treasurer may also utilize other information technology in accordance with Section 30701.

1 SEC. 6. Section 27201 of the Government Code is
2 amended to read:

3 27201. (a) The recorder shall, upon payment of
4 proper fees and taxes, accept for recordation any
5 instrument, paper, or notice which is authorized or
6 required by statute or court order to be recorded, if the
7 instrument, paper, or notice contains sufficient
8 information to be indexed as provided by statute, meets
9 recording requirements of state statutes and local
10 ordinances, and is photographically reproducible. The
11 county recorder shall not refuse to record any
12 instrument, paper, or notice which is authorized or
13 required by statute or court order to be recorded on the
14 basis of its lack of legal sufficiency.

15 “Photographically reproducible,” for purposes of this
16 division, means all instruments, papers, or notices which
17 comply with standards as recommended by the American
18 National Standards Institute or the Association for
19 Information and Image Management for recording of
20 records.

21 (b) Each instrument, paper, or notice shall contain an
22 original signature or signatures, except as otherwise
23 provided by law, or be a certified copy of the original. A
24 *facsimile signature shall be accepted on a lien recorded*
25 *by a governmental agency when that facsimile signature*
26 *has been officially adopted by that agency. The lien shall*
27 *have noted on its face a statement to that effect.*

28 SEC. 7. Chapter 13 (commencing with Section 30700)
29 is added to Division 3 of Title 3 of the Government Code,
30 to read:

31

32 CHAPTER 13. INFORMATION TECHNOLOGY

33

34 30700. The Legislature finds that information
35 technology is an indispensable tool of modern
36 government for the rapid and efficient handling of data,
37 records, communication, and transactions, and for
38 assisting decision makers in carrying out their tasks and
39 responsibilities at all levels of government.



1 30701. In matters relating to information technology
2 as defined in Section 30702 and to include the
3 preparation, use, processing, transmittal, and storage of
4 signatures, data, documents, reports, and accounting,
5 accepted information technology and business practices
6 may be applied. Information technology shall conform
7 and comply with appropriate industry standards without
8 jeopardizing the security or confidentiality of
9 information as provided by statute or of individual rights
10 to privacy provided by the California and United States
11 Constitutions.

12 30702. The following definitions apply for the
13 purposes of this chapter:

14 (a) “Appropriate industry standards” includes, but is
15 not limited to, those standards promulgated by
16 organizations such as the American National Standards
17 Institute (ANSI), Association for Information and Image
18 Management International (AIIM), International
19 Standards Organization (ISO), United States National
20 Standards Committee (USNC), and International
21 Electrotechnical Commission (IEC). Those
22 organizations support goals of United States and global
23 standardization.

24 (b) “Information technology” includes, but is not
25 limited to, all electronic technology systems and services,
26 automated information handling, system design and
27 analysis, conversion of data, computer programming,
28 information storage and retrieval, telecommunications
29 that include voice, video, and data communications,
30 requisite system controls, simulation, and electronic
31 commerce.